In the High Court of Punjab and Haryana, Chandigarh.

C.R. No.3611 of 2007 (O&M)

Date of Decision: 24.9.2007

Harish Grover

…Petitioner.

Versus

Pooja Bhatia and Others.

…Respondents.

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Vikas Bahl, Advocate
for the Petitioner.

Mr.G.S.Jawal, Advocate
for the Respondent No.1.

RAJESH BINDAL, J.

Learned counsel for the petitioner states that for the purpose of decision of the present revision petition, service of respondent Nos.2 to 4 is not necessary, as no relief is claimed against them.

The challenge in the present petition is to the orders passed by the learned Courts below whereby the application filed by the petitioner/plaintiff under Order 39 Rules 1 & 2 C.P.C. for interim injunction has been dismissed.

The dispute in the present case pertains to the possession of the land measuring 3 kanals and 19 ½ marlas. The petitioner/plaintiff claims that in fact he had purchased the land in dispute from the vendor through the property dealer, however, due to error wrong khasra numbers were mentioned in the sale deed, which were later on got exchanged by him with the vendors. Whereas respondent No.1 had claimed that the land in question was sold to her and in fact she is in actual physical possession of the land and the documents of exchange on the basis of some arbitration award has only been created by the petitioner/plaintiff to defeat the just claim of respondent No.1.

A perusal of the orders passed by both the learned Courts below show that it is highly contested litigation between the parties, which is further evident from the fact that even before this Court, the petitioner/plaintiff has placed on record a number of documents to substantiate his plea. By way of an application even subsequent documents and photographs are also sought to be brought on record. His submission is that both the learned Courts below have gone wrong in refusing the interim injunction to the petitioner/plaintiff protecting his possession even if he was not prima facie owner of the land in dispute in terms of the sale deed executed in his favour.

On the other hand, learned counsel for respondent No.1 submitted that the sole basis of the claim made by the petitioner/plaintiff is the exchange of the land made subsequent to the registration of the sale deed on the basis of some arbitration award, which has no bearing as far as the claim of the respondent No.1 is concerned as vide sale deed in favour of the petitioner the land in dispute was not sold to him. The interim injunction prayed for by the petitioner/plaintiff has rightly been rejected by both the learned Courts below.

Having heard learned counsel for the parties and perusing the orders passed by the learned Courts below, I am of the considered opinion that the petitioner/plaintiff has rightly been refused the interim injunction. It is the admitted case of the petitioner/plaintiff that the sale deed executed in his favour on May 4, 2005 does not contain the khasra numbers, the injunction regarding which is sought by him in the suit filed by him. In the suit it is claimed that after the execution of the sale deed, there was an understanding with Golden Property Dealer who had sold the land to the petitioner/plaintiff who thereafter agreed to rectify the mistake occurred at the time of registration of sale deed in his favour. Once the oral understanding did not materialize the matter was referred to the Arbitrator and Sh.Ravinder Kumar Nayyar, Advocate, who was appointed as an Arbitrator gave the award in favour of the petitioner/plaintiff. Though a number of documents running into 20 annexures including the plaint, written statement filed by the Property Dealers admitting the claim of the petitioner/plaintiff and replication filed by the petitioner/plaintiff have been placed on record, yet the written statement filed by the contesting respondent has not been placed on record for which no good reason could be given except that the petitioner/plaintiff sought to project his own case instead of putting entire material before this Court in case he wanted just and fair decision.

On a perusal of the impugned orders passed by the learned Courts below, it is evident that the claim made by the contesting respondent was that the property in question was sold by the vendors to her vide registered sale deed dated June 28, 2006. The sale deed in her favour incorporates the khasra numbers which are mentioned by the petitioner/plaintiff in the suit filed by him claiming himself to be the owner in possession thereof but not on the basis of any sale deed in his favour, but on the basis of an understanding of exchange with the Property Dealers and a subsequent arbitration award after the execution of sale deed in favour of the contesting respondent. The sale deed in favour of the contesting respondent is dated June 28, 2006, whereas the arbitration award in favour of the petitioner is dated July 31, 2006. It is further alleged that the suit filed by the petitioner/plaintiff against the contesting respondent and Property Dealers is in fact a collusive approach by the petitioner/plaintiff and the defendants No.2 to 4 in the suit, who have already filed written statement admitting the claim of the petitioner/plaintiff. The demarcation of the property was also carried out at the request of contesting respondent No.1 on September 22, 2006 observing that she is in possession of the property and further that mere suit for permanent injunction was not maintainable without seeking the relief for declaration.

Both the learned Courts below after consideration of the entire material placed on record by the parties, came to the conclusion that there is a positive attempt by the petitioner/plaintiff to create evidence in his favour showing transfer of the land in dispute in his favour after the sale deed had been registered in favour of the respondent No.1 on June 28, 2006 as prior thereto there was no document on record to show the specific boundaries of the land, the possession of which is sought to be protected by the petitioner/plaintiff. The first document showing the boundaries of the land came into existence in the form of arbitration award which is dated July 31, 2006. If both the parties agreed that there was an error in the sale deed already executed in favour of the petitioner/plaintiff, the same could be rectified by way of supplementary sale deed. It has further been found that merely by photographs or electricity or telephone numbers or small construction shown do not prove that it was the same property regarding which the dispute is there and injunction for which is prayed for. Accordingly, it was not safe to rely upon that material to grant injunction in favour of the petitioner/plaintiff. Even the alleged letter written by the respondents to the police authorities admitting that the possession on the land in dispute is of the

petitioner/plaintiff had also been discarded by the learned Courts below simply for the reason that the contesting respondent produced another letter which according to her was the actual letter written by her not admitting any such thing.

Even by filing the application before this Court, learned counsel for the petitioner/plaintiff sought to place on record certain photographs showing that at various places on the walls in a room, the name of the petitioner/plaintiff was appended with his telephone number. I could not find any reason for any person to append his name and telephone number at various places in one room constructed somewhere, though the claim made by this application was that during the pendency of the present petition before this Court, the contesting respondent had tried to take forcible possession of the land from the petitioner/plaintiff in which she failed.

In view of my above discussion, I find that both the learned Courts below have discussed the material projected by the petitioner/plaintiff to prove his possession on the property thread bare and had come to a definite conclusion that the petitioner has not been able to prove his possession on the property in any manner whatsoever on the basis of evidence produced by him. Accordingly, I do not find any justification to interfere with the well considered and well reasoned orders passed by both the learned Courts below declining the interim injunction in favour of the petitioner/plaintiff.

The revision petition is accordingly dismissed.

(Rajesh Bindal)
Judge

September 24, 2007
"DK"

None of judgments will have any effect as it has been found as a fact by both the learned Courts below that the petitioner/plaintiff has not been proved to be in possession of the suit land, which findings cannot be faulted with on the basis of any material placed on record by the plaintiff.